

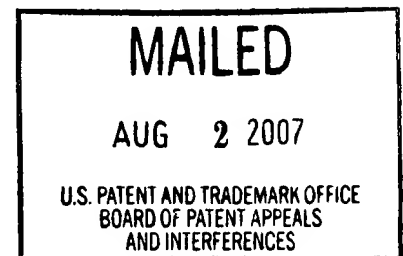
1 RECORD OF ORAL HEARING

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3 UNITED STATES PATENT AND TRADEMARK OFFICE

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6 BEFORE THE BOARD OF PATENT APPEALS
7 AND INTERFERENCES
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10 Ex parte KENICHI OTANI, YOSHIAKI KUMAMOTO, KOICHI
11 SAGARA, SHINJI KODAMA, MINORU GOTO, SUSUMU FUJINAMI,
12 TOKUO TSUURA, SHINJI OTAKURA, TAKEHIKO TOJO,
13 YUKIYA SATO, MASATAKA ISHIKAWA, SHINGO ODAJIMA,
14 and MASANORI TAKITA

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17 Appeal 2007-1664
18 Application 09/868,040
19 Technology Center 3700
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22 Oral Hearing Held: July 12, 2007
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26 Before HUBERT LORIN, JENNIFER BAHR, and WILLIAM PATE, III
27 Administrative Patent Judges
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30 ON BEHALF OF THE APPELLANT:
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33 LEE L. STEPINA, ESQUIRE
34 Oblon, Spivak, McClelland, Maier & Neustadt
35 1940 Duke Street
36 Alexandria, Virginia 22314

1 The above-entitled matter came to be heard on July 12, 2007,
2 commencing at approximately 9:04 a.m., at the United States Patent and
3 Trademark Office, 600 Dulany Street, Alexandria, Virginia, before
4 Elizabeth J. Walker, Reporter.

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6 JUDGE PATE: This is an oral hearing pursuant to 37 C.F.R. 41.47 in
7 and for the United States Patent Office, on Thursday, July 12th, 2007.

8 We are Docket B, and the Calendar numbers are going to be 23
9 through 26.

10 The hearing is in Madison East, Hearing Room B on the 9th floor, and
11 the sitting Judge are Pate, Bahr and Lorin.

12 JUDGE PATE: We can go off the record now.

13 (Whereupon, there was a brief recess.)

14 USHER: Good morning. Calendar Number 23, Mr. Stepina.

15 JUDGE PATE: Good morning, Counsel. We have had an
16 opportunity to go over the case and so we're interested in your presentation.

17 MR. STEPINA: Thank you.

18 JUDGE PATE: Go ahead.

19 MR. STEPINA: There are two independent claims in this case
20 reciting different particular features, thickness and density.

21 I would prefer to concentrate on the second of those issues, the
22 density issue in claim twelve, and stand on the briefs on independent claim

1 eleven and --

2 JUDGE PATE: Pardon me. Is this Appeal Number 2007-1580?

3 MR. STEPINA: Yes.

4 JUDGE PATE: I think 2007-1580 is the other case I guess you're
5 arguing.

6 MR. STEPINA: I'm here to argue on one case.

7 JUDGE PATE: Okay.

8 JUDGE LORIN: What claim are you looking at? Can you give us the
9 Appeal Number?

10 MR. STEPINA: I think these briefs were filed before Appeal
11 Numbers were required. The Application Number is 868,040.

12 JUDGE BAHR: We have that assigned as Docket Number 2007-
13 1664.

14 JUDGE PATE: The serial number that goes with 1580 is 11,017,710.
15 So that must be the other person from Oblon.

16 MR. STEPINA: Oh, I'm unaware of another person from Oblon
17 coming over here, and I'm unaware of that case.

18 I apologize for the other attorney --

19 JUDGE PATE: Well, we will let you go, with the understanding that
20 you are actually arguing Appeal Number 2007-1664, which is Docket
21 Number 25.

22 MR. STEPINA: I will look into that when I get back, I guess.

1 JUDGE PATE: And your Applicant is Kenichi Otani?

2 MR. STEPINA: Yes, for the molded article.

3 JUDGE PATE: Right, that's correct.

4 MR. STEPINA: Independent claim twelve, as best shown in Figure
5 Two, recites a bottom portion shown by reference number thirteen, a body
6 portion, twelve, and an angle between the wall theta is greater or equal to
7 eighty-five degrees.

8 And densities, row one and row two are called out. Row two is the
9 density of the corner portion, and row one is the density of another portion,
10 and as shown in Figure Two, it's the wall.

11 The Final Office Action and the Examiner's Answer assert that it
12 would be inherent that the cited references, Clay and Kiekefer, would have a
13 different density in the corner than in a wall portion, and that the density in
14 the corner would be lower than the density in the wall portion because, for a
15 given amount of material in a larger volume the density would have to be, by
16 definition, lower.

17 But inherency requires that something be necessarily true and not that
18 it might be true.

19 In this case, the Kiekefer reference calls out a pulp-molded article
20 made with paper pulp. And that is not necessarily a non-flowing material.
21 It's not necessarily a sheet that can't travel once it's in the mold.

22 Therefore, some of the material on the wall portion can flow into the

1 corner portion, and it's not necessarily true that the corner portion doesn't
2 have more material inside it, or a given volume, than the wall portion has.

3 That's why Kiekefer doesn't necessarily or doesn't inherently have a
4 lower density in a corner portion than a wall portion.

5 As far as Clay, Clay describes a sheet, but it also describes that the
6 sheet is coated with resin. So a sheet is placed in a wall with resin.

7 There is more volume in the corner portions than the wall portions;
8 however, the resin itself is intended to flow into the corner portions, so
9 there's more resin -- Clay describes that there's more resin in the corner
10 portions.

11 And that's at page two, I guess, at the bottom of column one and the
12 top of column two, page two.

13 Clay says, by providing increased space in this area -- and they are
14 talking about the corner -- where there is a maximum bending in the fibrous
15 laminations, the fibers become surrounded by greater amounts of fluid resin,
16 and thus are relieved somewhat from destruction.

17 At the top of column two Clay says, increasing the volume -- or
18 column one on page two -- increasing the volume on resin at the lower
19 marginal areas, such as the lower corners of the tray.

20 They are describing an advantage there.

21 So increased strength is provided by increasing the resin in the corner
22 areas in the Clay reference.

1 And therefore, it's not inherent that the density in the corners will be
2 lower in those areas than in a wall portion.

3 The Examiner's Answer doesn't address density, as far as the other
4 references, and the other references don't comment on the densities at the
5 corners or any other part of the molded articles, and don't remedy the
6 deficiencies just discussed regarding Kiekefer and Clay.

7 That's all I have.

8 JUDGE BAHR: Did you want to say anything about the eighty-five
9 degree limitation or greater limitation?

10 MR. STEPINA: We prefer to stand on the briefs in relation to that
11 issue.

12 JUDGE PATE: Any questions?

13 JUDGE LORIN: No.

14 JUDGE BAHR: No.

15 JUDGE PATE: Thank you very much. We will take this case under
16 advisement.

17 MR. STEPINA: Thank you. I'll look into the mixup.

18 JUDGE PATE: It could be a mixup here, too.

19 Do you have a card for the court reporter?

20 COURT REPORTER: Thank you.

21 Whereupon, at approximately 9:10 o'clock a.m., the hearing in the
22 above-entitled matter was concluded.